

ALJ/TIM/avs

Decision 01-06-074 June 28, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Expedited Application of Pacific Gas and Electric Company (U 39 M) to (1) Issue, Sell and Deliver One or More Series of Its First and Refunding Mortgage Bonds, Debentures, Subordinated Deferrable Interest Debentures, Promissory Notes and/or Other Evidences of Indebtedness in Connection with Domestic or Euro-Market offerings, to Guarantee the Obligations of Others in Respect of the Issuance of Securities and to Arrange For Standby Letters of Credit as Performance Guarantees, the Total Aggregate Principal Amount of Such Issuances and Guarantees Not to Exceed \$2 Billion; (2) Enter into One or More Interest Rate Caps, Collars and Swaps; (3) Issue Variable Rate Debt (Including Fixed Rate Debt Swapped to a Variable Rate) to Finance Balancing Account Undercollections; and (4) Obtain an Exemption from the Competitive Bidding Rule.

Application 00-10-029
(Filed October 18, 2000)

**OPINION REGARDING THE PETITION TO MODIFY
DECISION (D.) 01-01-062 FILED BY
PACIFIC GAS and ELECTRIC COMPANY (PG&E)**

Summary

This decision extends until May 1, 2002, PG&E's authority to pledge its gas customer accounts receivable ("accounts receivable") and core gas inventory ("core inventory") for the purpose of procuring core gas supplies.

Background

In D.01-01-062, the Commission granted PG&E authority under Pub. Util. Code § 851¹ to pledge its accounts receivable and core inventory² for the sole purpose of procuring core gas supplies. The authority granted by D.01-01-062 terminated the earlier of (i) 90 days after the effective date of the decision, or (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to at least BBB- by Standard & Poor's (S&P) or Baa3 by Moody's Investor Services, Inc. (Moody's). In D.01-02-050, the Commission extended until July 31, 2001, PG&E's authority to pledge its accounts receivable and core inventory for the purpose of procuring core gas supplies. The Commission's actions in D.01-01-062 and D.01-02-050 were in response to the precipitous decline in PG&E's financial condition, which culminated in PG&E filing for bankruptcy in April 2001.

On June 1, 2001, PG&E filed a petition to modify D.01-01-062 and D.01-02-050 (Petition). In its Petition, PG&E asks the Commission to extend

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

² For purposes of this decision, "core inventory" is defined as gas designated for core customers that is held in storage fields and pipelines.

PG&E's authority to pledge its accounts receivable and core inventory from July 31, 2001, to the effective date of a confirmed reorganization plan in PG&E's bankruptcy case or the closure or dismissal of PG&E's bankruptcy case. PG&E does not seek to change the provision in D.01-01-062 and D.01-02-050 that terminates PG&E's authority to pledge its accounts receivable and core inventory 15 days after an upgrade of PG&E's credit rating.

PG&E states that its requested modification of D.01-01-062 and D.01-02-050 is needed to enable PG&E to procure gas to meet the current and future needs of its core customers. PG&E asserts that as long as it is in bankruptcy, many gas suppliers will not sell gas to PG&E without a security interest in PG&E's accounts receivables and core inventory. PG&E states that the bankruptcy court has (i) confirmed PG&E's use of gas accounts receivables to secure core gas purchases, and (ii) authorized continued use of gas accounts receivable to secure core gas supplies without further order of the court.³

PG&E asks the Commission to act on its Petition at the Commission's meeting on June 28, 2001. PG&E states that delaying action beyond June 28 could adversely affect PG&E's ability to procure gas for its core customers.

Notice of PG&E's Petition appeared in the Commission's Daily Calendar on June 5, 2001. Pursuant to a ruling issued by assigned Administrative Law Judge (ALJ) Kenney on June 4, 2001, responses to PG&E's Petition were due on June 11, 2001. There were no responses to PG&E's petition.

³ The bankruptcy court's order allowing PG&E to use its gas accounts receivable to secure gas purchases does not supersede § 851, which requires PG&E to obtain authority from the Commission prior to encumbering its gas accounts receivable.

Discussion

We are persuaded by PG&E that it needs an extension of time beyond July 31, 2001, to pledge its gas accounts receivable and core inventory for the purpose of procuring core gas supplies. We are not persuaded, however, that PG&E should be granted an extension until its bankruptcy case is resolved. Given the precarious nature of PG&E's finances and the California energy crisis, we believe that it is in the public interest to periodically reconsider PG&E's need for authority to pledge its accounts receivable and core inventory.

For the preceding reasons, we shall modify D.01-01-062 and D.01-02-050 to extend PG&E's authority to pledge its accounts receivable and core inventory for the sole purpose of procuring core gas supplies until the earlier of (i) May 1, 2002, (ii) the effective date of a confirmed reorganization plan in PG&E's bankruptcy case, (iii) the closure or dismissal of PG&E's bankruptcy case, or (iv) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to BBB- by S&P or Baa3 by Moody's. In all other respects, D.01-01-062 and D.01-02-050 shall remain in full force and effect.

Category and Need for Hearing

In Resolution ALJ 176-3050, dated November 2, 2000, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that a hearing is not necessary. In D.00-12-064, the Commission affirmed and finalized the preliminary determinations in ALJ 176-3050. PG&E's petition to modify D.01-01-062 and D.01-02-050 does not affect the Commission's final determinations regarding category and need for hearing.

Public Utilities Code Section 311

Section § 311(g)(1) requires the Commission's draft decision regarding PG&E's Petition to be (i) served on all parties, and (ii) subject to at least 30 days of public review and comment prior to a vote of the Commission. Section

311(g)(2) allows the 30-day period to be reduced or waived upon the stipulation of all parties. PG&E, the only party that participated in this proceeding with respect to its Petition, asks the Commission to use its authority under § 311(g)(2) to reduce the 30-day period for public review and comment to 5 business days from the date of e-mail transmission of the draft decision.

The draft decision of ALJ Kenney was mailed and e-mailed on June 18, 2001. PG&E filed comments on the draft decision on June 21, 2001. These comments have been incorporated, as appropriate, in the final decision adopted by the Commission.

Findings of Fact

1. D.01-01-062 granted PG&E authority under § 851 to pledge its accounts receivable and core inventory for the sole purpose of procuring core gas supplies. The authority terminated 90 days after the effective date of D.01-01-062, or, if earlier, 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to BBB- by S&P or Baa3 by Moody's.

2. D.01-02-050 extended PG&E's authority to pledge its accounts receivable and core inventory until the earlier of (i) July 31, 2001, or (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt.

3. In its Petition, PG&E seeks to extend its authority to pledge its accounts receivable and core inventory until the effective date of a confirmed reorganization plan in PG&E's bankruptcy case or the closure or dismissal of PG&E's bankruptcy case. PG&E does not seek to change the provision in D.01-01-062 and D.01-02-050 that ends PG&E's authority to pledge its accounts receivable and core inventory 15 days after an upgrade of PG&E's credit rating.

4. PG&E represents that its requested modification of D.01-01-062 and D.01-02-050 is needed to enable PG&E to obtain sufficient supplies of gas to meet the current and future needs of its core customers.

5. PG&E represents that as long as it is in bankruptcy, many gas suppliers will not sell gas to PG&E without a security interest in PG&E's gas accounts receivables and core inventory.

Conclusions of Law

1. It is in the public interest to modify D.01-01-062 and D.01-02-050 to extend PG&E's authority under § 851 to pledge its gas customer accounts receivable and core gas inventory for the sole purpose of procuring gas supplies to meet the current and future needs of its core customers.

2. Given the precarious nature of PG&E's finances and the California energy crisis, it is in the public interest to periodically reconsider PG&E's need for authority to pledge its gas accounts receivable and core inventory.

3. D.01-01-062 and D.01-02-050 should be modified to extend PG&E's authority to pledge its accounts receivable and core inventory until the earlier of (i) May 1, 2002, (ii) the effective date of a confirmed reorganization plan in PG&E's bankruptcy case, (iii) the closure or dismissal of PG&E's bankruptcy case, or (iv) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to BBB- by S&P or Baa3 by Moody's.

4. The following order should be effective immediately to help ensure PG&E's ability to procure sufficient supplies of gas to meet the current and future needs of its core customers.

O R D E R

IT IS ORDERED that:

1. Pursuant to Pub. Util. Code § 851, Pacific Gas and Electric Company (PG&E) is authorized to pledge its gas customer accounts receivable and core gas inventory, subject to PG&E's Mortgage, for the sole purpose of procuring gas for PG&E's core customers, including flowing gas supplies and storage gas.

2. The authority granted to PG&E in Ordering Paragraph 1 shall terminate the earlier of (i) May 1, 2002, (ii) the effective date of a confirmed reorganization plan in PG&E's bankruptcy case, (iii) the closure or dismissal of PG&E's bankruptcy case, or (iv) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to BBB- by Standard & Poor's or Baa3 by Moody's Investor Services.

3. PG&E's petition to modify Decision (D.) 00-01-062 and D.01-02-050, filed on June 1, 2001, is granted and denied to the extent set forth in the previous Ordering Paragraphs. In all other respects, D.01-01-062 and D.01-02-050 remain in full force and effect.

This order is effective today.

Dated June 28, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners